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Montana EEOAA

Equal Employment Opportunity and Affirmative Action Program

Report to the Governor

annual report for the period
July 1, 1987 to June 30, 1988
and eight-year summary
1981 — 1988

Equal Employment Opportunity Section
Employee Relations Bureau
State Personnel Division
Department of Administration

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THE 1988 MONTANA EQUAL EMPLOYMENT OPPORTUNITY AND AFFIRMATIVE ACTION PROGRAM'S REPORT TO THE GOVERNOR WAS PREPARED BY THE STAFF OF THE STATE PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION

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CHAPTER I

EXECUTIVE SUMMARY

A. REASON FOR EEO/AA PROGRAM AND ANNUAL REPORT

Title VII of the Civil Rights Act of 1964 requires that all persons be given equal opportunity in employment regardless of their sex, race, national origin, religion, or age. Montana's Human Rights Act and Governmental Code of Fair Practices provide the same protection and add marital status, handicap and political belief as protected categories.

Executive Order 24-81, signed by Acting Governor George Turman on October 13, 1981, (See Appendix A), commits the executive branch of state government to an Equal Employment Opportunity Program. The major program objective is to "eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training." The Department of Administration is charged with implementing and maintaining the program. This annual report describes the program's status.

B. CONTENT OF REPORT

This report focuses on the executive branch's FY 88 employment of classes of citizens protected under both federal and state law, and provides recommendations for improving areas of concern.

Included are sections describing eight years of EEO/AA progress under the Schwinden Administration; activities of the EEO Section of the State Personnel Division, Department of Administration, which is the work unit responsible for administration of the EEO Program; U.S. Supreme Court decisions affecting employment of protected groups; and Montana Human Rights Commission decisions on employment discrimination cases.

C. FINDINGS AND RECOMMENDATIONS

A review of the employment of protected classes in the executive branch in FY 88 shows that while progress has been made in some areas, other areas still need improvement.

Minorities

In the executive branch minorities constitute 3.2% of all employees as compared to 4.8% of the Montana civilian labor force. This representation remains unchanged from FY 87.

Utilization of minorities in state government is still below their representation in Montana's labor force and consequently needs improvement. The overall selection rate is higher for minorities than non-minorities but the application rate is slightly lower than labor force availability. Therefore, the state needs

to focus affirmative action on measures to attract a larger number of qualified minority applicants.

Disabled

In the executive branch 3.2% of all employees are disabled as compared to an estimated 5.0% representation in the Montana civilian labor force. The selection rate for the disabled was slightly lower than for the non-disabled. This does not indicate a major problem, but it does imply the need for more training of hiring officials on reasonable accommodation for the disabled.

The disabled represented 3.3% of all applicants, considerably lower than their estimated 5.0% availability in the labor force. The executive branch's affirmative action measures for the disabled should focus on attracting a larger number of qualified disabled applicants.

Women

While women are well represented overall in the state work force, women are still concentrated in lower paying occupational categories such as clerical, and in the lower levels of the higher paying occupational categories such as professionals and managers. Agency affirmative action measures for women, consequently, should focus on upward mobility and on recruitment for non-traditional occupational areas.

In EEO Category A, Administrators and Officials, the overall representation of women has remained unchanged since FY 87. Women are 20.6% of executive branch employees in Category A, as compared to a 30.6% representation in the Montana civilian labor force. While selection and internal promotion rates for women in this category are high, women represented 26.6% of all applicants, slightly lower than their labor force representation. The state's affirmative action measures for women in this category, therefore, should continue to focus on both attracting a larger number of qualified applicants, and training more women for management positions.

In Category B, Professionals, women comprise 40.7% of executive branch employees as compared to their 49.1% representation in Montana's civilian labor force. However, a large proportion of women professionals in the labor force are teachers, an occupation not prevalent in the state workforce. Analysis of professional occupations in the state's workforce indicates that an availability closer to 40% is more appropriate.

Although the overall representation of women in professional jobs equals their labor force availability, women still tend to be concentrated in the lower paying professional classes. There are a number of specific professional occupations where women continue to be underutilized. Women also constitute only 32.2% of all applicants for professional positions. Affirmative action measures in this category, therefore, should focus on upward mobility, overall recruitment, and recruitment for women in non-traditional professional occupations.

CHAPTER II

EEO & AA IN STATE GOVERNMENT 1980-1988

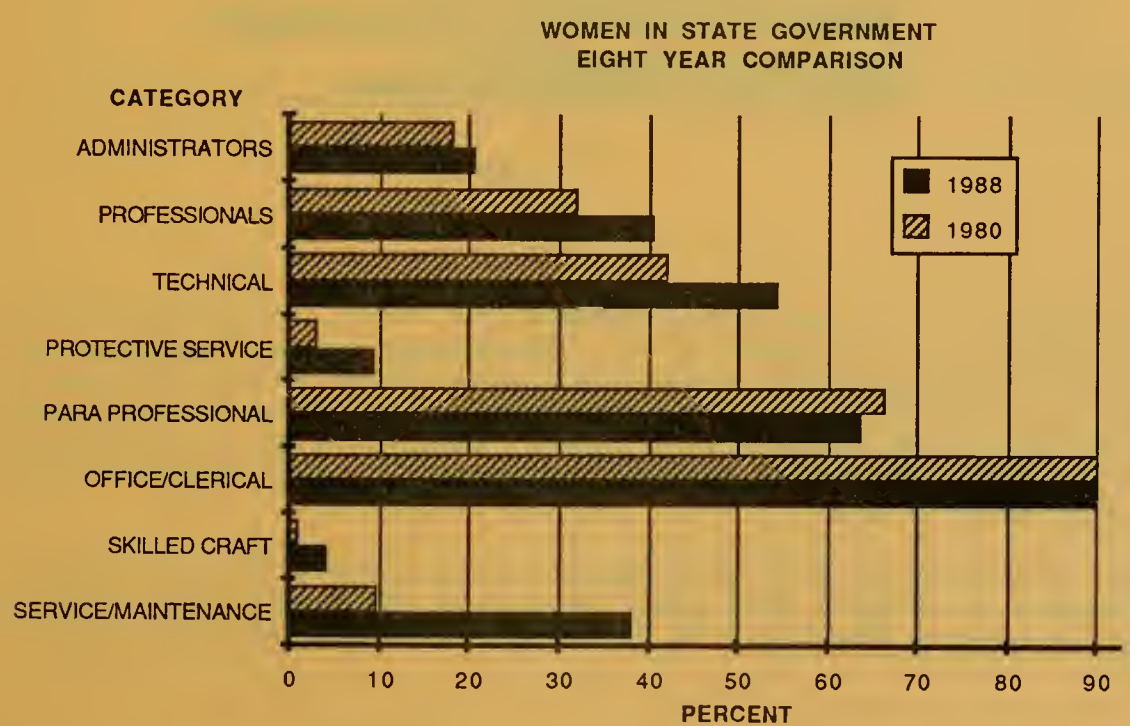
This is the last EEO/AA Program Report to the Governor that will be issued under the administration of Governor Ted Schwinden. It is appropriate, consequently, that the report contain an overview of progress made in equal employment opportunity and affirmative action over the eight years of the present administration.

The Schwinden administration made clear its commitment to fairness and equality in employment policy for state government by issuing three executive orders promoting equity in its first two years in the Governor's Office.

Executive Order No. 24-81 mandating a strong EEO/AA program was issued on October 13, 1981. This policy initiative has resulted in an on-going rigorous examination of the state's employment practices to eliminate discrimination and to correct the effects of past discrimination through a voluntary affirmative action program. The positive results of the EEO/AA program are illustrated by significant increases in representation of women, minorities and the disabled in the state work force.

The gains made by women are the most striking. Overall employment of women in the executive branch increased from 42.4% in 1980 to 46.1% in 1988. Much more dramatic gains were made in many individual EEO-4 Categories. Some examples are: an 8.6% increase in Category B, Professionals; a 12.1% increase in Category C, Technicians; a 6.5% gain in Category D, Protective Services; and a 9.3% increase in Category H, Service/Maintenance. These are actual percentage, not proportional gains. (See Table A for complete comparisons between 1980 and 1988 in all EEO Categories for women and minorities.)

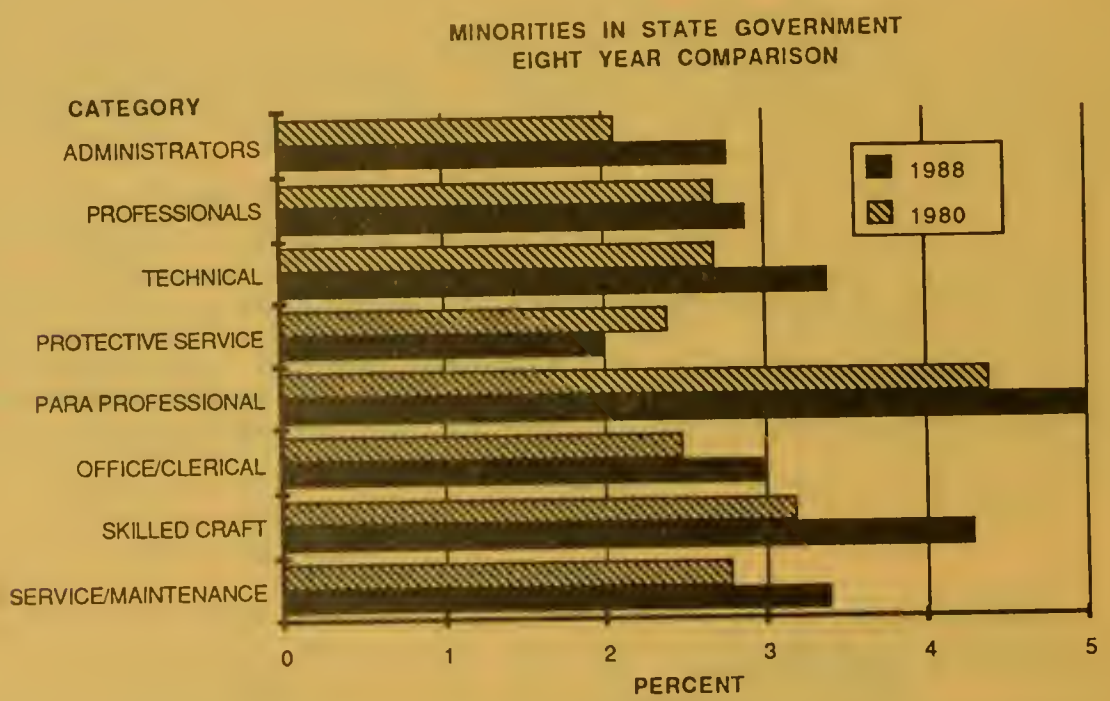
TABLE A



The administration's commitment to sex equity and belief in the ability of women was also made evident by the appointment of female directors to three of the largest departments in state government.

Minority representation increased from 2.8% in 1980 to 3.2% in 1988. Disabled representation increased from 2.5% in 1980 to 3.2% in 1988. While the change in percentage points for minorities and for disabled may seem small (.4 and .7 respectively), they represent proportional increases of 14.3% for minorities and of 28% for the disabled. Examination of selection rates for state position vacancies since these type of reports began to be generated in 1986 show that the disabled have been selected at essentially the same level as the non-disabled, and that minorities have been selected at a higher level than non-minorities. Lack of more progress in the representation of these two groups in state government has been a result of the low number of applicants.

TABLE B



Executive Order No. 30-81 was signed December 22, 1981, recreating the Governor's Committee on Employment of the Handicapped. The Committee was charged with promoting maximum employment opportunities for the handicapped in Montana with emphasis on state government positions. Over the last seven years the Committee has undertaken numerous activities in promoting employment of people with disabilities such as conferences, awards programs, and disabled awareness training.

Even before the Committee was reestablished, the Governor's Office on May 5, 1981, sponsored a statewide invitational meeting in conjunction with "Montana Handicapped Awareness Week" and the "International Year of Disabled Persons."

In this meeting 30 community representatives from 14 cities and counties met with nearly 50 state agency and association officials to discuss what was happening and should be happening with the state's disabled citizens.

More recently, in June of 1988, the Governor supported a Committee recommendation for a special program for hiring the severely disabled in state agencies. The recommendation, soon to be considered by state agency directors, calls for an employment goal of 1% of state agency positions to be filled by the severely disabled by the end of 1991.

Executive Order No. 7-82, signed on August 6, 1982, prohibited sexual harassment in all state agencies, and ordered the Department of Administration to develop rules and provide training on sexual harassment prevention. By 1985, all supervisory personnel and 50% of all employees had received sexual harassment prevention training. In an article in the highly respected national publication "Public Administration Review," the Montana state government's program was called "impressive" and was touted as a model for sexual harassment policy development in other states.

While progress still needs to be made in some areas such as encouraging more people with disabilities, minorities and women to apply and compete for positions in state government, the present administration has set high standards for future administrations.

CHAPTER III

EMPLOYMENT OF MINORITIES, DISABLED AND WOMEN

A. EEO/AA PROGRAM STATISTICAL RECORD KEEPING & REPORTING

The executive branch is required by federal and state laws and regulations to keep comprehensive records on the sex, race, age, and disability status of both employees and applicants. This data is essential for an effective state EEO/AA program. Such data can identify those personnel practices which unfavorably impact or discriminate against protected groups.

The state collects EEO information through the computerized Personnel/Payroll/Position Control (P/P/P) System.

The P/P/P system contains information on all state employees and on applicants for state jobs. For applicants, EEO information is collected on a tear off portion of the state application form. For employees, EEO information is collected and updated using the EEO Input Form (see Appendix C).

These automated records produce statistical reports used to analyze the state's employment practices.

Types of Analyses Used in this Report

The analyses used in this report are similar to those used by state agencies to examine their employment of protected groups. When examining their employment statistics, however, agencies conduct more detailed analyses.

Workforce Analysis is a report on the number of state employees by race, sex, and disability in each EEO-4 Category (See Appendix B for EEO-4 Category definitions). (See Table C on page 7.)

Availability Analysis estimates the percentage of minorities and women in the Montana civilian labor force who have the skills necessary for entry into each EEO-4 category. U.S. census data for Montana is used in estimating availability figures. (Information is not available on the EEO-4 Category level for people with disabilities.)

Utilization Analysis compares the state's workforce (Workforce Analysis) to Montana's civilian labor force (Availability Analysis) to determine whether or not a protected group is underutilized. Underutilization means having fewer minorities or women employed in a particular job category than would be reasonably expected compared to their availability in the same job category in the civilian labor force. This type of analysis is one commonly used by the Equal Employment Opportunity Commission and the courts as a first step in assessing the existence of employment discrimination.

Whenever underutilization is identified, recruitment and selection data are reviewed to determine the causes of the underutilization.

TABLE C

EEO PROFILE OF PERMANENT EMPLOYEES

By Job Category
As of June 30, 1988

Includes Comparison to October 1, 1987

EEO Category		Total Number		% Female		% Minorities		% Disabled	
		87	88	87	88	87	88	87	88
A.	Administrators & Officials	639	688	20.7	20.6	2.4	2.8	3.3	3.5
B.	Professionals	2,884	2,946	40.0	40.7	2.7	2.9	3.8	3.9
C.	Technicians	1,784	1,879	54.0	54.3	3.4	3.4	2.7	2.8
D.	Protective Services	601	614	9.0	9.6	1.8	2.0	1.5	1.1
E.	Para Professional	748	744	61.8	63.7	4.5	5.0	3.6	3.5
F.	Clerical	1,408	1,393	89.8	90.1	3.2	3.0	2.5	2.4
G.	Skilled Craft	723	718	4.4	4.2	4.6	4.3	4.6	4.0
H.	Service & Maintenance	452	445	39.8	38.2	3.8	3.4	4.2	3.6
	STATE TOTAL	9,259	9,377	45.9	46.1	3.2	3.2	3.3	3.2

Applicant Flow Analysis examines the recruitment and selection of applicants to determine if these activities contribute to an underutilization problem.

A recruitment problem means there are fewer minorities, disabled or women applying for positions than would reasonably be expected compared to their availability in the civilian labor force. (See Table D on page 9.)

A selection or hiring problem means selection practices have an adverse impact on protected groups. A selection problem is commonly identified by comparing the selection rate of a protected group to the selection rate of the rest of the labor force, (i.e., comparing the selection rate of minorities to the selection rate of non-minorities). If a protected group's selection rate is significantly lower than the selection rate for other groups, then a selection problem exists. (See Table E on page 10.)

In each of the following sections on women, minorities and the disabled, the analyses listed above are applied to assess the state's performance in the employment of protected groups, and to identify problem areas which should be addressed by state agencies in the future through affirmative action. Recommendations for correcting problem areas are addressed in the following chapter.

B. EMPLOYMENT OF MINORITIES

Under Title VII of the Civil Rights Act and under Montana's Human Rights Act, American Indians/Alaskan Natives, Asian/Pacific Islanders, Blacks, and Hispanics are considered minorities (see back page of EEO Input Form, Appendix C for definitions of each group). The employment of minorities is discussed using the total workforce, because Montana civilian labor force and state workforce numbers are too small to draw meaningful conclusions for individual job categories.

TABLE F

Employment of Minorities in State Government - FY 88

(Includes Permanent Employees Only)

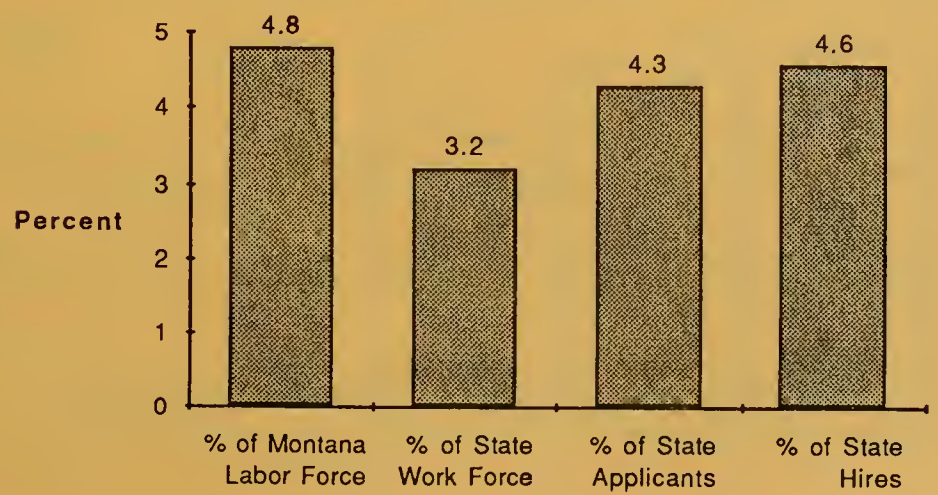


TABLE D

APPLICANT FLOW ANALYSIS/APPLICATION RATES

FY 88 (July 1, 1987 - June 30, 1988) *

EEO Category	Men	Women	L.F.**	White	Minorities	Non-Disabled	Disabled
Admin. & Officials							
No. Applicants	337	124		430	13	457	9
Application Rate	72.3%	26.6%	30.6%	92.3%	2.8%	98.1%	1.9%
Professionals							
No. Applicants	4,109	2,040		5,636	196	6,145	195
Application Rate	64.8%	32.2%	49.1%	88.9%	3.1%	96.9%	3.1%
Technicians							
No. Applicants	2,464	1,653		3,836	184	4,019	196
Application Rate	58.5%	39.2%	49.3%	91.0%	4.4%	95.4%	4.7%
Protective Services							
No. Applicants	922	148		985	65	1,062	27
Application Rate	84.7%	13.6%	11.3%	90.5%	6.0%	97.5%	2.5%
Para Professional							
No. Applicants	1,222	1,172		2,306	77	2,349	54
Application Rate	50.9%	48.8%	***	96.0%	3.2%	98.0%	2.3%
Clerical							
No. Applicants	828	4,958		5,241	297	5,769	187
Application Rate	13.9%	83.2%	81.8%	88.0%	5.0%	96.9%	3.1%
Skilled Craft							
No. Applicants	1235	66		1,219	69	1,298	33
Application Rate	92.8%	5.0%	5.2%	91.6%	5.2%	97.5%	2.5%
Service Maintenance							
No. Applicants	1,267	315		1,412	113	1,543	62
Application Rate	78.9%	19.6%	***	88.0%	7.0%	96.1%	3.9%
All Categories							
No. Applicants	12,384	10,476		21,071	1,014	22,642	763
Application Rate	52.9%	44.8%	42.6%	90.0%	4.3%	96.7%	3.3%

* Based on available data. Not all information on applicants and hires for FY 87 was entered into the Applican Flow database at the time of this report. Available raw number and percent total's vary, some applicants di not fill out forms necessary to acquire this data or left some questions unanswered.

** L.F. - Montana civilian labor force availability of women by category. Labor force figures by category ar not available for minorities and the disabled. Overall availability for minorities is 4.8% and approx. 5% fo the disabled.

*** Montana labor force figures for the Para-Professional and Service/Maintenance EEO-4 categories are not avail able separately. They are combined and the availability figure is 34.6% for women.

TABLE E

APPLICANT FLOW ANALYSIS/SELECTION RATES

FY 88 (July 1, 1987 - June 30, 1988) *

EEO Category	Men	Women	White	Minorities	Non-Disabled	Disabled
Administrators & Officials						
No. Applicants	337	124	430	13	457	9
No. Hired	27	16	38	3	44	0
Selection Rate	8.0%	12.9%	8.8%	23.1%	9.6%	0.0%
Professionals						
No. Applicants	4,109	2,040	5,636	196	6,145	195
No. Hired	231	211	397	15	440	15
Selection Rate	5.6%	10.3%	7.0%	7.7%	7.2%	7.7%
Technicians						
No. Applicants	2,464	1,653	3,836	184	4,019	196
No. Hired	144	178	297	14	312	13
Selection Rate	5.8%	10.8%	7.7%	7.6%	7.8%	6.6%
Protective Services						
No. Applicants	922	148	991	65	1,062	27
No. Hired	39	14	49	4	52	2
Selection Rate	4.2%	9.5%	4.9%	6.2%	4.9%	7.4%
Para Professional						
No. Applicants	1,222	1,172	2,306	77	2,349	54
No. Hired	135	162	284	11	290	7
Selection Rate	11.1%	13.8%	12.3%	14.3%	12.4%	13.0%
Clerical						
No. Applicants	828	4,958	5,241	297	5,769	187
No. Hired	56	385	375	25	430	14
Selection Rate	6.8%	7.8%	7.2%	8.4%	7.5%	7.5%
Skilled Craft						
No. Applicants	1,235	66	1,219	69	1,298	33
No. Hired	101	4	96	8	101	4
Selection Rate	8.2%	6.1%	7.9%	11.6%	7.8%	12.1%
Service Maintenance						
No. Applicants	1,267	315	1,412	113	1,543	62
No. Hired	66	63	122	5	128	3
Selection Rate	5.2%	20.0%	8.6%	4.4%	8.3%	4.8%
All Categories						
No. Applicants	12,384	10,476	21,071	1,014	22,642	763
No. Hired	799	1033	1,658	85	1,797	58
Selection Rate	6.5%	9.9%	7.9%	8.4%	7.9%	7.6%

* Based on available data. Not all information on applicants and hires for FY 88 was entered into the data base at the time of this report. Some applicants did not fill out forms necessary to acquire this data or left some questions on the form unanswered.

3.2% of all state workers are minorities, compared to a 4.8% representation in Montana's civilian labor force. Minorities represented 4.3% of all applicants for state positions and 4.6% of all those hired for state positions. The selection rate for minorities (85 hired divided by 1,014 applicants = 8.4% selection rate) exceeds the selection rate for whites (1,658 hired divided by 21,071 applicants = 7.9% selection rate).

A comparison of current minority representation in state government for permanent positions (3.2%) to the end of FY 85 (3.2%), indicates no change in minority representation.

C. EMPLOYMENT OF THE DISABLED

Under the Vocational Rehabilitation Act, a disabled person is defined as having a physical or mental impairment which substantially limits a major life activity (such as walking, caring for oneself, seeing, hearing, speaking, learning or breathing); or has a record of such impairment; or is regarded as having such an impairment. This definition is used in identifying disabled persons in the state workforce.

As with minorities, the number of disabled persons in the Montana civilian labor force and in the state workforce is too low to draw statistical conclusions on the category level. Consequently, assessment of the executive branch's employment of disabled persons is discussed on the basis of the whole workforce.

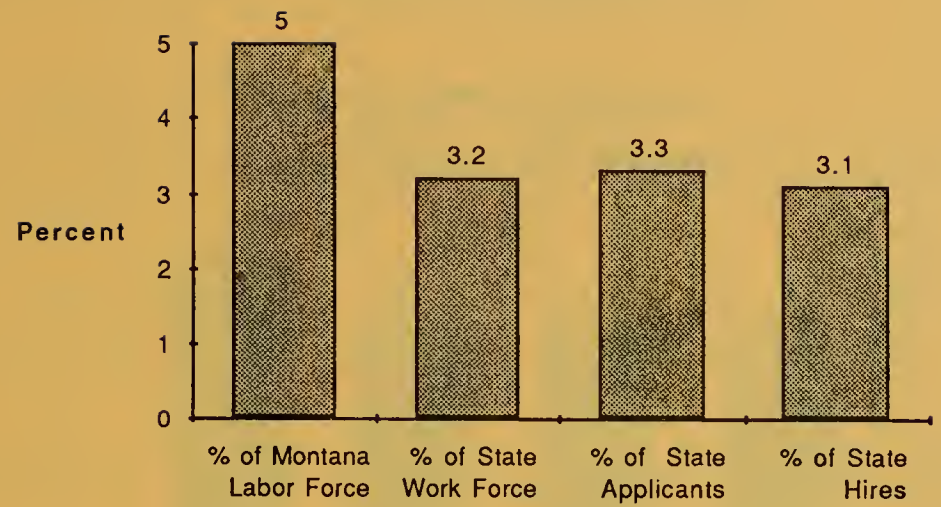
The Equal Employment Opportunity Commission (EEOC) does not require reporting on utilization of disabled persons. U.S. Census figures on the availability of the disabled in the civilian labor force by census job code are not available. Instead, employers are required by the Vocational Rehabilitation Act and the Montana Human Rights Act, to treat disabled applicants on an individual basis and make reasonable accommodations whenever appropriate. It still is helpful, however, to analyze the utilization of disabled workers to determine the effect of state government employment practices on employment of the disabled.

Based on 1980 U.S. Census special survey data, the availability of disabled persons in Montana's civilian labor force is an estimated 5.0%. Disabled persons currently constitute 3.2% of the executive branch's permanent employees.

TABLE G

Employment of Disabled In State Government - FY 88

(Includes Permanent Employees Only)



The disabled represented 3.3% of all applicants for state positions, as compared to 2.6% in FY 87. The disabled represented 3.1% of all state hires as compared to 2.3% in FY 87.

The 7.6% selection rate for the disabled (58 hired divided by 763 applicants) is slightly lower than the 7.9% selection rate for the non-disabled (1,797 hired divided by 22,642 applicants). The selection rate for disabled, however, is 96.2% of the selection rate for non-disabled and therefore falls within the EEOC's 4/5's or 80% rule.* It also represents an improvement over FY 87 when the selection rate for the disabled was 87% of the selection rate for the non-disabled.

A comparison of current disabled representation in state government for permanent positions (3.2%) to the end of FY 87 (3.3%), indicates a slight loss in disabled representation.

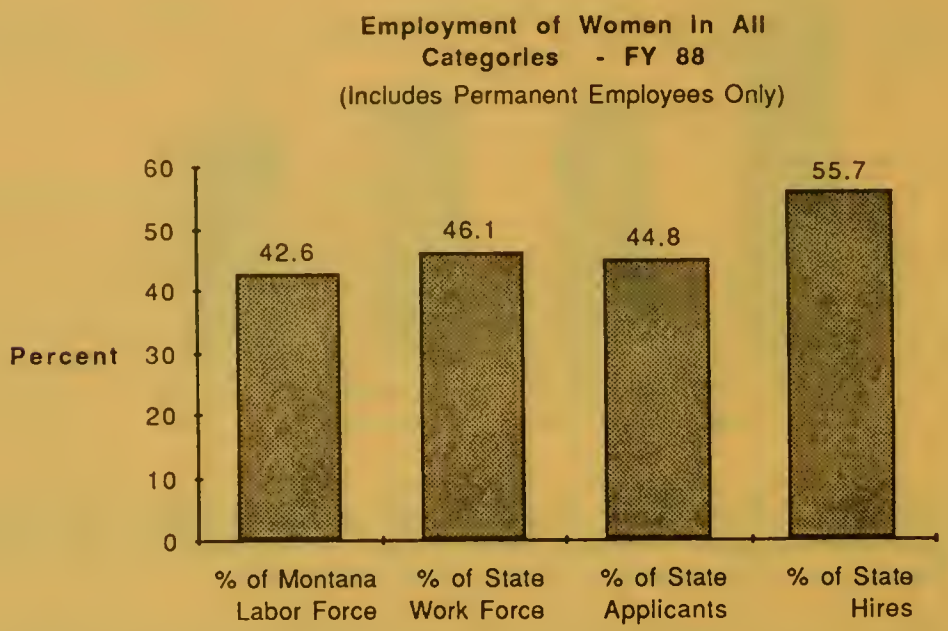
D. EMPLOYMENT OF WOMEN

Women constitute 46.1% of the state workforce and 42.6% of Montana's civilian labor force.

* Under this rule, if the selection rate for a protected group is less than 4/5's or 80% of the selection rate for the non-protected group, then adverse impact is a problem. In this case the selection rate for the disabled is more than 80% of the selection rate for the non-disabled and is consequently not considered a problem under the rule.

44.8% of all state applicants were women. Women represented 55.7% of all state hires. Women had a 9.9% selection rate (1,033 hired divided by 10,476 applicants) as compared to a 6.5% selection rate for men (799 hired divided by 12,384 applicants).

TABLE H



(Information on hires, promotions and terminations of permanent female employees is included in Appendix D.)

Women in both the civilian labor force and in the state workforce, are concentrated in lower-paying occupational categories such as clerical, and in the lower levels of the higher-paying occupational categories such as professionals and managers. This results in a significant wage gap between the average wage men earn and the average wage women earn in state government.*

While state government exceeds the civilian labor force overall in the employment of women, four EEO categories in state government still lag behind the labor force in female representation. These are Category A, Administrators and Officials (20.6% v. 30.6%); Category B, Professionals (40.7% v. 49.1%); Category D, Protective Services (9.6% v 11.3%); and Category G, Skilled Craft (4.2% v. 5.2%). Categories A and B are examined in more detail in this section.

* (The average salary of permanent, full-time women employees was 77% of the average salary of permanent, full-time men employees, resulting in a 23% wage gap as reported in the Comparable Worth Report to the 1987 Montana Legislature.)

Categories D and G are not examined in detail here because of the relatively small number of employees in each category, the smaller underutilization problem, and because the majority of employees in these categories are employed in two or three agencies. Employment of women in Categories D and G, however, is regularly monitored by the EEO Section to assess the need for affirmative action and the success of affirmative action measures.

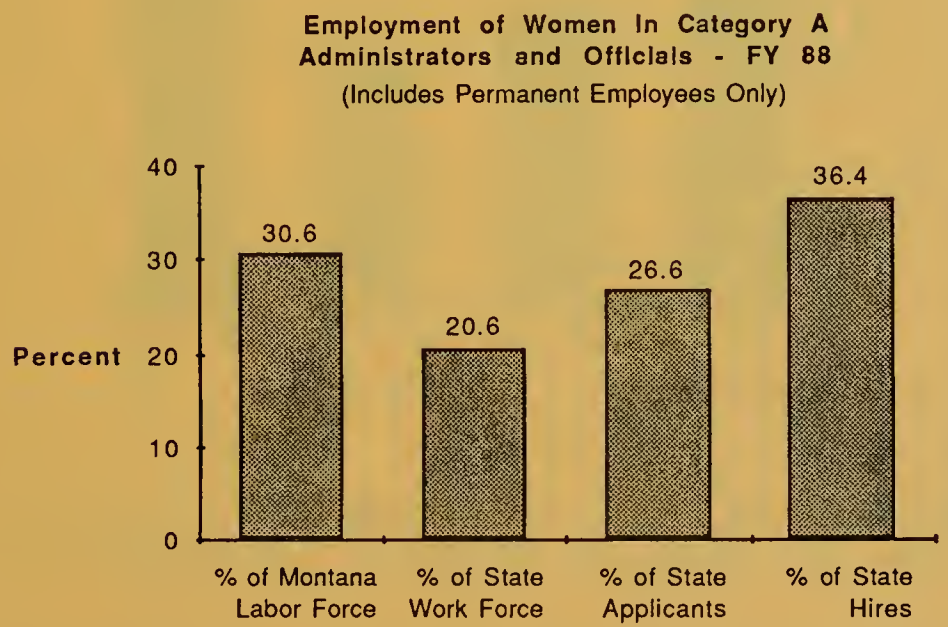
EEO Category A, Administrators and Officials

Women constitute 20.6% of Category A, Administrators and Officials, in the state workforce (includes permanent employees only) as compared to their 30.6% representation in the Montana civilian labor force.

Women constituted 26.6% of the applicants for state positions in Category A. This is significantly higher than their 20.6% representation in this category in the state workforce, but lower than their 30.6% representation in the Montana civilian labor force.

The selection rates for Category A are 12.9% for women (16 hired divided by 124 applicants), and 8.0% for men (27 hired divided by 337 applicants).

TABLE I



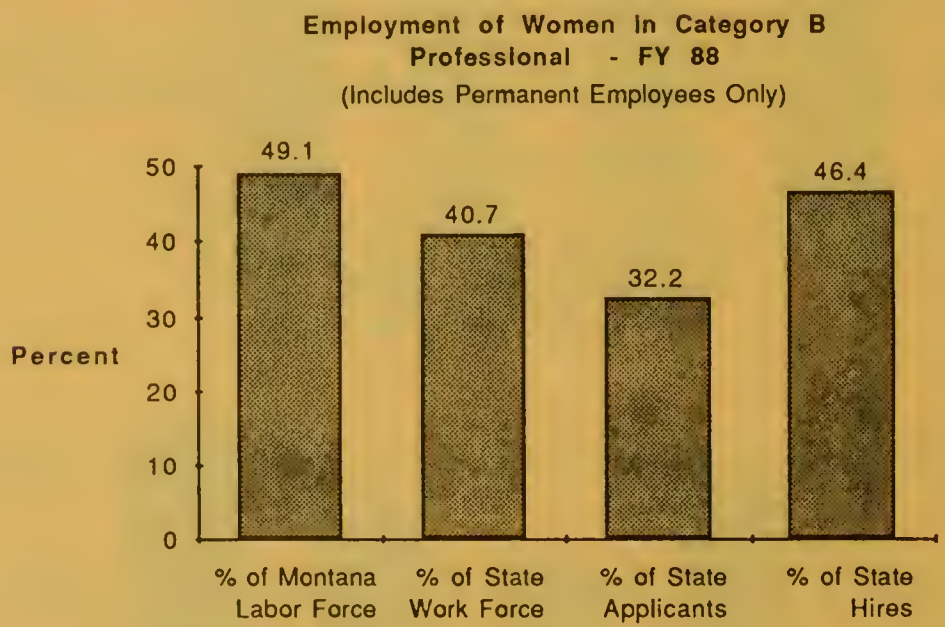
There was very little change in representation of women in Category A from FY 87. Representation of women in this category decreased slightly from 20.7% in FY 87 to 20.6% in FY 88.

EEO Category B, Professionals

Women comprise 40.7% of Category B, Professionals, in the state workforce as compared to their 49.1% representation in this category in Montana's civilian labor force. However, a large proportion of women professionals in the labor force are teachers, an occupation not prevalent in the state workforce. Analysis of professional occupations in the state's workforce indicates that an availability closer to 40% is more appropriate. Using the 40% as the availability figure, the state as a whole has reached parity in the professional category.

Although parity has been reached in this category as a whole, there remain areas of significant concern. There are still a number of occupational groups in the state workforce that have fewer women represented as compared to their representation in the labor force.

TABLE J



In FY 88 women were 32.2% of applicants for positions in Category B and were 46.4% of all hires. The selection rate for women is 10.3% as compared to a 5.6% selection rate for men in this category. (See Table C, page 7.)

The representation of women in Category B has increased slightly from FY 87. Representation of women in this category increased from 40.0% in FY 87 to 40.7% in FY 88.

CHAPTER IV

SPECIAL ACTIVITIES AND RECOMMENDATIONS FOR FY 89

A. GENERAL

EEO/AA Briefings for Managers

In FY 87 the EEO Section developed and began giving special EEO/AA briefings to groups of agency managers. In FY 88 the briefing presentation was updated and training on hiring the disabled was added. These briefings have resulted in increased understanding by state managers of the rationale and principles of affirmative action, and in increased confidence in the AA planning process. Consequently, the EEO Section will continue to offer AA briefing sessions in FY 89, and recommends that agencies schedule this training for their managerial and supervisory staff.

1988 EEO Conference

The eighth annual EEO Conference to be held in September, 1988, will emphasize a new approach in developing employer attitudes towards hiring and managing minorities, women and the disabled. Recent studies show that by 1992, non-disabled white males will, for the first time, be a minority in the American work force. This evolution means that employers eventually will not have to be encouraged to hire what are now considered "targeted groups," but will have to do so if they want to take advantage of some of the best talent available in the American labor force.

The conference, with the theme "Diversity Makes a Difference," will emphasize that diversity in the work force results in more creativity and innovation and is, therefore, something which should be sought by employers as an asset. Conference workshops will also deal with supervisory and management styles which are necessitated by employing people who have different perspectives, motivations, ways of communicating and work styles.

The positive aspects of a diverse work force and management of diversity in the work place is a theme which is being incorporated into EEO and management training offered by the State Personnel Division. Agencies are encouraged to have managers attend the 1988 conference and to have their management staff attend other special training offered on managing a diverse work force.

Recruitment Sources

The most significant and consistent barrier to increasing representation of protected groups in state government in the last few years has been identified as their low application rates. Improving the quality of recruitment source listings for minorities, women and the disabled was begun in FY 88 as one project to increase recruitment levels.

In FY 89 the EEO Section staff will emphasize establishing better communications with recruitment sources for minorities, women and the disabled throughout the

state. This will be accomplished by meeting with, and providing training to organizations which may provide referrals of protected group members for state positions.

Special Assistance

In the past special assistance provided to various units of state government has been productive in correcting problem recruitment and selection procedures. The EEO Section will continue to bring special problem areas to the attention of state agency management and offer special assistance on corrective measures.

B. EMPLOYMENT OF MINORITIES

The 3.2% representation of minorities in state government in FY 88 is still significantly below their estimated 4.8% representation in Montana's labor force. The selection rate for minorities in FY 88 was higher than that for non-minorities (8.4% v. 7.9%), but the minority application rate in FY 88 was lower than their representation in the labor force (4.3% v. 4.8%). Affirmative action measures, therefore, need to focus on increasing the application rate for minorities.

In FY 89 the EEO Section staff will be traveling to reservations and to Native American Indian colleges and high schools to meet with employment and placement officials. The purpose of the meetings will be to establish better communications with these recruitment sources, and to establish better procedures for obtaining and processing applications from Native American Indians.

Meetings with other minority group organizations in various cities and Montana colleges will also be initiated to make these groups aware of the State's affirmative action program, and aware of ways to find out about and apply for state positions.

C. EMPLOYMENT OF THE DISABLED

In the FY 87 Report, increased recruitment of the disabled was cited as essential in improving the disabled's representation in state government. The application rate for the disabled in FY 88 (3.3% of all applicants) did increase from FY 87 (2.6% of all applicants). The disabled's application rate for state government positions, however, is still significantly below their estimated 5% representation in Montana's labor force. Increased recruitment of people with disabilities will, consequently, remain an area of emphasis in the EEO Program.

As part of its overall recruitment effort, the EEO Section staff will be meeting with representatives of disabled employment programs to find ways of improving the application rate of people with disabilities.

In June of 1988 an initiative on employment of people with severe disabilities was recommended to the Governor by the Governor's Committee on Employment of People with Disabilities. This recommendation asked state agencies to set an affirmative action goal for employing people with severe disabilities equal to 1%

of agency positions by 1992. If this initiative is adopted by state agencies, it should help increase the disabled's representation in state government. The EEO Section will be providing assistance as needed to those agencies which decide to implement this initiative into their affirmative action plans.

D. EMPLOYMENT OF WOMEN

As shown in Chapter III, employment of women overall exceeds that of the Montana labor force; and selection rates for women are very good overall. Employment of women in certain EEO Categories and occupational groups, however, still needs attention.

Employment of women in EEO Category A, Officials and Administrators, in state government (20.6% representation) still lags behind the Montana labor force (30.6% representation). The application rate for women in this category has improved (26.6% in FY 88 as compared to 13.6% in FY 87). Since the application rate is still lower than labor force availability, increasing the female applicant pool for Category A positions should still be emphasized. The State Personnel Division's Professional Development Center has developed a pre-management training program which specifically includes issues pertinent to women in management. Agencies which are experiencing underutilization of women in Category A should identify women in professional positions whose potential for upward mobility would be enhanced by attending this training program.

Female applicants for professional positions (32.2% of all applicants) still lags behind both their representation in state government (40.7%) and their representation in the Montana labor force (40.0%). Therefore, recruitment of women professionals should also be emphasized, especially in those agencies which are still experiencing underrepresentation of women in this category.

The EEO Section's overall plan to establish better communication with recruitment sources for protected groups includes plans to meet with recruitment source organizations for women statewide. Special emphasis in this recruitment project will include attempts to attract female applicants for non-traditional occupations for women.

CHAPTER V

EQUAL EMPLOYMENT OPPORTUNITY SECTION ACTIVITIES

The Equal Employment Opportunity (EEO) Section's major program responsibilities are:

- To develop and maintain the state's Equal Employment and Affirmative Action Program, which includes review and approval of all state agency EEO/AA Plans.

- To provide technical assistance to agencies on EEO/AA related matters.

- To maintain and enhance EEO information systems on the state's computerized Personnel/Position Payroll/Control (P/P/P) system and to provide periodic computerized reports to agencies on their EEO performance.

- To provide administrative support to the Governor's Committee on Employment of the Disabled.

A. EEO/AA PROGRAM DEVELOPMENT AND MAINTENANCE

Affirmative Action Plans

FY 88 was the beginning of a two-year affirmative action plan cycle, so the EEO Program's major focus was on agency AA plan development.

During the first quarter a special training session was held for EEO officers to update them on the AA planning process and to review computer reporting systems used to analyze agency EEO/AA performance.

During the second quarter the EEO Section worked with agencies in verifying and interpreting reports on their workforces (agency employees are identified by race, sex, age, disability, job class, and EEO category), and reports on the availability of minorities and females qualified for positions in their agencies. Agencies were informed of procedures and timeframes for completing AA Plans.

During the third quarter the EEO section reviewed drafts of AA plans and EEO policy statements from agencies. EEO officers were informed of needed modifications to their plans. Approximately 50% of the agencies received final approval of submitted plans during this quarter.

During the fourth quarter special reports were developed for the Department of Highways and the Department of Family Services to identify employees utilized in regional and district offices. The section completed final reviews and sent approval letters to the remaining agencies.

Recruitment/Outreach

The Section began work with a task force of agency personnel officers and Job Service representatives to develop consistent affirmative action job order language and procedures. The project evolved into a review of all procedures used by agencies in making vacancy announcements, and of all procedures used by Job Service in handling agency vacancy announcements. The goal of the review is to produce clear, consistent procedures for both functions.

A survey was conducted of the recruitment sources (women, minority, disabled and college placement organizations) to identify better ways of attracting qualified applicants. The recruitment source mailing list was also updated and entered in a computerized program for ease in sorting and accessing.

Sexual Harassment Prevention Program

The EEO Section assisted the Policy Section in rewriting the sexual harassment prevention policy and wrote a model policy statement. A task force of agency personnel officers was established to review the new policy. The new policy places special emphasis on defining sexual harassment, including examples, and on clarifying reporting procedures.

A special training session on sexual harassment prevention was provided for EEO Officers. Fifteen other sessions were presented with five agencies participating.

A new video tape emphasizing the responsibility of management in preventing sexual harassment was purchased for use in management training.

The section also provided technical assistance to a number of agencies on internal sexual harassment investigations.

Upward Mobility for Women

The section continued to work in cooperation with the Professional Development Center on development of a basic management training program which incorporates women's issues and eliminates sex bias. This program has been initiated to facilitate the movement of women from the professional level of state government to the administrative/managerial level. The program will be available to state agencies in October of 1988.

Many of the concepts developed for this program have already been incorporated into the existing higher level management training programs offered by the Professional Development Center.

B. TECHNICAL ASSISTANCE

In FY 88, the EEO Section emphasized providing a better understanding of the Equal Employment Opportunity/Affirmative Action (EEO/AA) Program to state agencies. The following activities were conducted in this area:

AA Briefings and EEO Training

The section's AA Briefing presentation and the visual aids were revised to clarify changes to the EEO/AA Program and better explain the program to state agency managers. Eight briefings were conducted with five agencies participating.

Six workshops were conducted on EEO Recruitment and Selection with four agencies participating.

Annual EEO Conference

The seventh annual EEO Conference was conducted in September, 1987. The conference provided up-to-date EEO/personnel management information. More than 70 people attended. Participants included personnel/EEO officers and managers from state, county and city government, hospitals, human resource organizations, colleges and universities, women and minorities organizations, private sector employers and labor unions.

Special Assistance

The section assisted the Department of Commerce and the Department of Highways in meetings with federal officials on EEO compliance.

The EEO Coordinator was a member of Montana Highway Patrol interview board for Sergeant, Lieutenant, and Captain promotion and assisted updating the recruitment and selection procedures for cadets. The section prepared and presented testimony on the patrol's accomplishment in EEO/AA at the public hearing for accreditation.

The section assisted the Air National Guard of the Department of Military Affairs in development of an EEO/AA training program.

Technical Assistance Calls

The EEO Section received more than 900 telephone calls requesting information and assistance on EEO-related matters. Much of this increased activity was a result of presentations given to groups from the public and private sector.

The nature of assistance covered:

- EEO/AA
- Discrimination
- Recruitment/Selection
- Outreach Programs
- Training
- P/P/P System
- Disability and Accommodation
- Governor's Committee on the Employment of the Disabled

The calls have been from:

- State Agencies
- School Districts
- Disabled, minority, and women's organizations
- City/County government including law enforcement
- Applicants
- Private sector employers

C. MAINTENANCE AND ENHANCEMENT OF EEO-P/P/P SYSTEMS

In FY 88, the EEO Section emphasized improving and streamlining computer reports and analyses, and updating databases used by state agencies and the EEC Section to analyze EEO performance. The following activities and projects were undertaken in this area:

EEO Input Form

In the first quarter an EEO Input Form was developed to obtain more reliable, accurate race, sex and disability data on state employees. Since the workforce analysis (women, disabled, and minority employees utilized) forms the foundation for identifying underutilization of women, disabled, and minorities, this new addition should prove invaluable to the EEO/AA program.

Using the new form, a statewide survey of employees was conducted in August, 1987 to update EEO information. The form will be given to each new employee hired to keep EEO data current. An "EEO Data Verification Guideline" was developed for EEO officers and managers to verify race, sex, and disability data for accuracy and completeness. A survey of payroll personnel conducted in the third quarter indicated that the form was being completed by new employees, that forms were being verified by managers, and that there were no major problem with the form or procedures.

System Enhancements

A number of modifications were made to P/P/P programs and reports to improve ease of use, accuracy and to comply with federal reporting requirements. These included modifications to the EEO-4 Report to the Equal Employment Opportunity Commission, to Applicant Flow reports, and to on-line input procedures for the Applicant Flow system.

D. GOVERNOR'S COMMITTEE ON EMPLOYMENT OF PEOPLE WITH DISABILITIES

Executive Order No. 30-81 creating the Governor's Committee on Employment of the Handicapped (GCEH) charged the Department of Administration with providing administrative support to the committee through December of 1987. Executive Order No. 3-88 which replaced No. 30-81 extended this responsibility of

providing administrative support. An EEO Section staff person serves as executive director to the committee. The executive director carries out directives issued by the committee at quarterly meetings and conducts other Committee functions on an as-needed basis.

New Executive Order

The new executive order includes several changes designed to make the Committee a more effective organization. The following are significant changes made through Executive Order No. 3-88:

- The Committee's name was changed to the Governor's Committee on Employment of People with Disabilities Advisory Council to mirror the new name of the President's Committee.
- The Committee's membership structure was changed to allow more representation by private sector employers and members at large.
- The membership term of members was changed from one year to two years concurrent with the life of the executive order.

The creation of new membership vacancies through committee restructuring and the resignation of some existing members resulted in nominations being sought for six vacancies on the Committee. These vacancies were filled by gubernatorial appointment in March of 1988.

Annual Conferences

A one-half day conference titled "Forum on Disabled Employment Issues" was sponsored by the Governor's Committee and the Human Resources Development Institute (AFL-CIO). The Forum was held September 26, 1987, in Bozeman.

The Forum featured Jay Rochlin, Executive Director of the President's Committee on Employment of the Handicapped as the keynote speaker. Twelve general session speakers represented private sector employers, disabled advocacy groups and disabled employment service providers. Speakers included Mary (Peg) Hartman, Commissioner of Labor; Gail Gray, Director of the Department of Social and Rehabilitation Services; and Jim Murry, Executive Secretary of the Montana AFL-CIO. Three interactive panel sessions representing the same three groups listed above examined critical employment issues of the disabled.

Approximately 115 attended the Forum. Most of those participants who filled out evaluations rated the Forum successful and indicated that a conference on disabled employment should be held annually. Consequently, the Committee has decided to sponsor another conference in 1988. (A report on the 1987 Forum has been produced and is available through the EEO Section, State Personnel Division.)

The Committee's conference subcommittee has decided that the 1988 conference will be a one day event held in Butte at the Copper King Inn, October 26.

Awards Program

Six Governor's Committee achievement awards were prepared and presented to employers in Helena and Bozeman. Forty-eight Key Employer certificates were presented to employers during this fiscal year.

The Committee awards subcommittee has reviewed the Governor's Committee awards program and restructured it to coordinate with the President's Committee awards program, and to be more responsive in recognizing achievements of the disabled and service providers.

Employ the Handicapped Month

A proclamation naming October, 1987, Montana Employ the Handicapped Month was prepared by the Section and signed by the Governor. Special promotional packages on the month of observance were prepared and forwarded to Job Service and Vocational Rehabilitation Offices statewide. Other promotional efforts included taped appearances on radio and television news programs by the staff and Committee members.

Work in preparing for the 1988 month of observance during October which is now Disability Employment Awareness Month, was begun during FY 88. Regional groups were either contacted or are in the process of being formed to conduct awareness activities during October.

Two Year Work Plan

In the first two meetings of the new Governor's Committee on Employment of People with Disabilities in 1988, a 1988-89 calendar year work plan for the Committee was formulated. The work plan was submitted to the Governor and approved in June of 1988. Copies of the work plan are available through the EEO Section, State Personnel Division.

Quarterly Meetings

Four Committee meetings were held in FY 88. The EEO Section scheduled all meetings and prepared materials including special reports for each meeting. Minutes on all meetings were prepared and sent to members and organizations having an interest in committee affairs.

E. OTHER ACTIVITIES

In addition to assistance provided to state agencies, Section staff also provided assistance to organizations outside of state government as follows:

- The state EEO Coordinator was chairperson of the Helena area Expanding Your Horizons (EYH) program sponsored by the Office of the Superintendent of Public Instruction. This included responsibility for organizing an all-day conference on career exploration for high school girls.

- A number of EEO/AA and sexual harassment presentations were given at meetings of organizations for women, minorities, and the disabled. Some of the larger gatherings included the American Society of Personnel Administrators conference in Billings, the "Adam's Rib" conference in Butte and the Women in Transition conference in Great Falls.

CHAPTER VI

AGENCY ACCOMPLISHMENTS

State agencies, using the P/P/P system's reports and analyses, have been monitoring the problem areas identified in their Affirmative Action Plans and implementing action items to correct the deficiencies. It is not possible to list activities of all state agencies, but the following are some examples of affirmative actions step taken by state agencies during FY 88.

The Department of Fish, Wildlife and Parks has stressed the upward mobility of women in non-traditional occupational areas. In FY 88 five women have received promotions in the research, fisheries and wildlife biology areas. Four of these promotions were from lower level occupational categories into professional positions.

A second woman was also hired into the Law Enforcement Division as a Game Warden Trainee. A male minority employee was recently promoted from a grade eight position into a grade 10 training assignment with eventual promotion into grade 12 upon completion of the training.

The Department of Justice hired four female Highway Patrol Cadets bringing the total number of female Highway Patrol Officers to nine. The four women recruits have graduated from the Highway Patrol Recruit Academy and were sworn in July 1, 1988. Upward mobility for women and minorities in the Highway Patrol is being stressed through participation in a career development program. An improved promotion program was implemented in 1988 which resulted in a veteran female Patrol Officer being placed in a "promotion pool" for Sergeant vacancies which may occur in the next two years.

Overall the department has made significant progress in the employment of women. In 1975 only three women were in positions that were at the pay grade 12 or above with only one in a management or supervisory position. In 1988 there are 42 women at grade 12 or above, with 8 in management or supervisory positions.

The Department of Revenue established the SWAP Training Program in which employees in management level positions exchanged duties with other employees at the same grade level in an effort to enhance and expand their management skills. Six Department of Revenue employees are currently participating including one woman and one minority.

The Director met with disabled employees to determine possible barriers for disabled employees in the department and to find solutions to those barriers. A committee was formed to work with the Department of Administration toward resolving the issues that were discussed.

Special recruitment programs were conducted with Montana colleges which included advertising positions targeted for affirmative action.

Sexual harassment awareness prevention training has been offered on an on-going basis for managers and supervisors, and to individual work units.

The department participated in the Rocky Mountain Youth Development Program and Job Training Partnership Act program placing five individuals in permanent positions four of which were women.

The Department of Social and Rehabilitation Services has taken the following actions towards meeting their 1987 and 1988 affirmative action hiring goals:

- Hired nine female Rehabilitation Counselors.
- Hired three handicapped persons and promoted another.
- Hired or promoted seven minority employees including hiring two minority persons in the Paraprofessional category.
- Hired one woman in the Officials/Administrator category.

The Department of Labor and Industry has nearly eliminated a serious underutilization of women in the Employment Counselor job class through recent affirmative action hiring for several positions.

The International Association for Personnel in Employment Security (IAPES) local chapter in conjunction with the Interdepartmental Coordinating Committee for Women (ICCW) has developed a pre-management training course to be conducted in July 1988. The course will be open to all employees, but one target group will be women who seek to move into management.

The department Coordinating Committee for Women reviewed all clerical position descriptions for potential classification/pay inequities.

A luncheon hosted by the department honoring ten employees for their community service, much of which was for the handicapped and other disadvantaged groups.

The department Training Officer is in the process of developing an automated training records system which will allow the department to track training needs and accomplishments by race, age and sex. The system will be used to ensure that training for upward mobility is being offered on an equitable basis to all employees.

The Department of Highways has undertaken an extensive effort to 1) train managers and supervisors in EEO/AA, 2) review recruitment and selection procedures for adverse impact, and 3) recruit more women and minorities.

A formal procedure has been implemented under which randomly selected selection processes are reviewed for invalid selection practices or requirements which have an adverse impact on protected groups. Nineteen processes were reviewed in FY 88 resulting in the identification of some non-job related education and experience requirements and suspect interview questions.

Most Division and District Administrators have now received special training in EEO and Affirmative Action and periodically receive computer reports to use in monitoring the employment of targeted groups.

Special recruitment efforts have included visits to all seven Indian reservations and special consultations with TERO (Tribal Employment Rights Office) representatives; a presentation at the Women in Transition Conference in Great Falls, and updated recruitment source lists being distributed to all department offices.

Some highlights of progress in affirmative action hiring are an increase of 10 women in the EEO Category, Professionals, and the hiring of three female GVW Officers bringing representation of women in the EEO Category, Protective Services to 16%.

CHAPTER VII

U.S. SUPREME COURT RULINGS

The U.S. Supreme Court made only one major ruling affecting equal employment opportunity or affirmative action in the last fiscal year. In "Watson v Fort Worth Bank and Trust" the Supreme Court has ruled that employees alleging discrimination in hiring and promotions need not prove that the discrimination was intentional when the employer's decisions were based on subjective criteria.

The Supreme Court's 1971 landmark decision in "Griggs v. Duke Power Co." made it clear that if objective selection criteria, such as a scored test, had a substantial adverse impact on a protected group, the employer would also be required to prove the objective criteria was job related or be open to a charge of discrimination. The "Griggs" decision firmly established the precedent that a plaintiff did not have to show an intent on the part of the employer to discriminate, only that the criteria used in an employment practice resulted in discrimination. The "Watson" decision affirms that this theory, referred to as "adverse or disparate impact," is applicable to subjective as well as objective criteria.

As a result of their decision the court reinstated a Title VII discrimination claim by a black bank employee who had been rejected in favor of white applicants for four promotions to supervisory positions. The employee alleged that her employer's selection process, which did not rely on any precise or formal selection criteria, but granted supervisors complete discretion to make promotion decisions, had an adverse effect on blacks and was discriminatory.

In reaching its decision, the court reasoned that prohibiting the disparate impact analysis in employment practices cases ultimately would destroy the usefulness of the theory altogether. An employer simply would have to add a subjective element, such as an interview, to an otherwise objective selection process to avoid the discriminatory-effects test of the disparate impact theory and force each claimant to prove intent.

While the Justices agreed that the disparate impact analysis applied to subjective employment criteria, there was no consensus on the evidentiary standards to be applied in these cases. Although the Justices did not agree on what evidence is needed to establish a disparate impact claim based on subjective criteria, their decision leaves no doubt that plaintiffs need not prove an intent to discriminate in either subjective or objective employment decisions where statistical evidence shows a "disparate impact." Under either circumstance, employers must be able to justify the use of a selection process that limits the opportunities of minorities and women.

The Supreme Court has granted review to a Ninth Circuit case (Wards Cove Packing Co. v Atonio [1988, US 1988 US LEXIS 3097]), presenting evidentiary issues similar to those left unresolved in the Watson case. This may provide the court with an opportunity to establish the boundaries of the disparate impact theory and the role of statistics and the allocation of proof under that theory.

In practical terms what importance does the "Watson" decision have for Montana state government? Since state government agencies have very few validated objective employment decision processes, the principles of this case apply to most employment decisions made by the state's managers and supervisors. Labor law experts suggest, as a result of the "Watson" decision, that employers should:

1) Be aware of what adverse or disparate impact is and regularly analyze statistically the effects of subjective as well as objective criteria in their employment decisions. (Participating state agencies are already provided with a computer generated report through the P/P/P Applicant Flow System which analyzes adverse impact for hiring decisions.)

2) Be prepared to support subjective conclusions with specific facts rather than generalized impressions. Identify factual bases for each subjective conclusion. For example, if the job requires "leadership," what examples support your conclusion that one employee is a leader and another employee is not?

3) Explain to managers and supervisors that they should be prepared to articulate the basis for each subjective decision they make. Some examples of subjective bases for decisions are motivation, experience, leadership, ambition and self-discipline.

CHAPTER VIII

HUMAN RIGHTS COMMISSION REPORT

A. PUBLIC EDUCATION EFFORTS

The commission and its staff have attempted to provide public education, the coordination of anti-discrimination activities, and interagency cooperation through direct meetings between the commission and interested public and private groups, public lectures, and business rights information programs.

In September 1987 the commission met with the Montana Landlords Association to discuss rental problems. The meeting included representatives of the Helena and Great Falls Landlords Associations and the Montana Low Income Coalition. The commission has also held several informal meetings with state agency representatives in conjunction with regularly-scheduled commission meetings in Helena.

Individual commissioners and staff members provided information to over one thousand members of the public in 23 speaking engagements. The audiences ranged from a Montana Bar Association section, service clubs, and personnel and business societies to agencies of state and county government. The topic which groups wished addressed the most was that of Acquired Immune Deficiency Syndrome (AIDS). Commissioners and staff made 24 presentations on the subject of AIDS. Six organizations of personnel professionals and business people had staff members address particular problems in hiring, firing, and employment practices, with emphasis on the practical problems of business. Other presentations included updates on legislation, agency procedures, and Indian cultural perspectives in discrimination law.

The commission staff was unable to respond to many invitations to speak to groups on the discrimination law aspects of AIDS, so the staff developed a detailed "model address" to be used by individual commissioners in public presentations and to distribute to groups requesting information on the subject.

The professional staffers of the Division provide public information services to Montana and out-of-state businesses, as well as to Montana governmental bodies, through telephone and personal consultations. During the past year the staff responded to 253 requests for information. Seventy-two of the responses were made through informational letters, informal opinions and mailings of informational materials. Calls and visitors came from 63 Montana cities, towns and communities, and 19 other states (including the District of Columbia). Most of the telephone queries came from Helena (93), Billings (61), Missoula (41), Bozeman (28), Great Falls (27), and Kalispell (17).

These businesses and governmental agencies were primarily interested in Montana's maternity leave law (85 queries). Many of the calls involved insurance coverage and benefits for employees who are pregnant and who incur child delivery costs. Of the 139 contacts for information about aspects of employment, 60 asked about employment applications, policies and pre-employment questions, 44 dealt with employment terms and conditions, and 22 involved

firing practices and procedures. The ten greatest areas of employer interest were employment practices and procedures (139), sex discrimination (129), handicap discrimination (79), age discrimination (41), agency practices and procedure (31), marital status discrimination (21), advertising practices (17), housing discrimination (14), race discrimination (9), and religious belief discrimination (7). Twenty-five of the contacts were about various other problems of discrimination law and policy. Of the 72 mailed responses, the greatest interest was for written information on maternity leave and pregnancy (28), AIDS (13) and the content of Montana discrimination statutes and rules (9). Staff members also responded to requests to analyze employment applications (7) and review employment policies (3).

The primary users of the public information service were state and local government. There were 24 calls from state agencies (not including many informal meetings of agency staffers). The greatest agency user of the service was the Montana Job Service (23), which frequently called to respond to its own requests for information from employers. Attorneys for state agencies and the counties made 14 information contacts. Information was given to county officials in 16 instances, and to officials of cities and towns 8 times. Five legislators took advantage of the service. The major private businesses and groups whose agents called or contacted the commission staff were law firms (33 contacts), insurance agents and companies (25), physicians, hospitals and health care providers (24), service firms (20), educational institutions (20), inns (14), newspapers (13 [for information other than news]), retail businesses (12), and restaurants (7). Twenty of the contacts were from various public service groups, including advocacy organizations and providers.

B. COMMISSION DECISIONS

The Human Rights Commission decides contested cases involving claims of illegal discrimination using the adjudicative procedures of the Montana Administrative Procedure Act. During the period July 1, 1987, to June 30, 1988, the commission issued final orders in several contested cases, both on the merits and on points of procedure. The more important decisions on the merits include:

-- Case No. SARMsE86-2903, Turner v. Omo Construction (October 8, 1987). Turner claimed she was a victim of sex discrimination in employment for the failure of a construction company which provides road construction signs and traffic control to give her the higher-paying job of a "signer." Turner was a "flagger," directing traffic in road construction, and she wished to be a "signer," putting up detour and traffic signs. The commission found that Turner's claim was not valid under principles of discrimination law since she had not actually applied with the company to do signing work. The commission also found there was no showing the company's policies adversely impacted female construction workers. The commission dismissed the claim.

-- Case Nos. AE86-2791 and AE86-2792, Rettig and Hrasky v. K Mart (October 8, 1987). Rettig and Hrasky were "door greeters" at a Billings retail

chain store who were responsible for security and other functions. When the chain's corporate headquarters and the store's manager decided to eliminate the door greeter positions, other employees took over greeter functions. The commission found that while the decision to eliminate the positions was neutral and nondiscriminatory, the employer did not take promised measures to find the women other positions and instead gave available work to other, younger, employees for which Rettig and Hrasky were qualified. For violation of age discrimination provisions of the Human Rights Act, the commission awarded Rettig $23,504.29 back pay (including interest) and Hrasky $23,063.82 in back pay, interest and medical benefits.

-- Case Nos. SE85-2580 and SE85-2581, Freese v. P.W. Berry Company (October 8, 1987). Freese was a female construction worker who contended she was dismissed twice from a construction project due to her sex. The commission found that the employer's contention that Freese was dismissed for her failure to meet the pace set by the project foreman was pretextural, and awarded her $4,730.25 back wages (plus interest) for sex discrimination.

-- Case No. SE86-2842, Berg v. Burlington Northern Railroad (November 23, 1987). This was an important procedural decision which dealt with the problem of the effect of federal court class action decisions upon commission cases. In June of 1987, the U.S. District Court for the District of Minnesota approved a settlement agreement which resolved the individual discrimination claims of female employees and job applicants who sought work with Burlington Northern. Berg was a member of the class and had an opportunity to submit her claim for individual relief to the court. The commission found Berg was actually a member of the class the federal litigation was intended to benefit and that she had failed to "opt-out" or exclude herself from the suit, so she was bound by the Minnesota settlement. Her claim was dismissed.

-- Case No. HpE81-1468, Simmons v. Mountain Bell (January 19, 1988). In 1986 the commission ruled Simmons had failed to file her retaliation claim (employment dismissal) within the statutory 180-day period. The First Judicial District Court returned the case for the commission to hear further evidence on whether the failure of Simmons to file her claim within the statutory period was due to errors by the commission staff and therefore subject to the doctrine of equitable tolling. The commission found that Simmons had not taken the reasonable measures available and known to her and that her claim was barred.

-- Case No. HpE86-2931, Danielson vs. Burlington Northern (February 2, 1988). Danielson was a railroad engineer who was removed from his duties operating trains from Livingston to Billings when he had heart bypass surgery. He was reassigned to the lower-paying position of railroad yard

engineer. The commission found that having heart bypass surgery and a heart condition constitutes a handicap under Montana law and that he was physically qualified to operate railroad locomotives on regular runs. The commission rejected the railroad's arguments that engineers with heart conditions should, without an individual determination of ability, be barred from operating locomotives. The commission awarded Danielson $21,902.65 back pay and $7,629.30 interest.

-- Case No. RRtE86-2946, Henry v. Trailways Lines, Inc. (May 23, 1988). Henry is a black male who worked for Trailways as a motor coach operator. He previously prevailed in a discrimination suit against the company. After reinstatement he became involved in employment disputes which led to his forced resignation. The commission found Henry was subjected to different treatment, harassment and racial epithets due to his race, and awarded him $28,047.99 back wages and benefits (with interest) and $1,500 damages for emotional distress.

-- Case No. 8701003106, Kanvick v. Yellowstone County Planning Department (May 23, 1988). Kanvick, a male, claimed the Planning Department refused to interview him or hire him as a planning technician because of his sex. The commission found, from employment statistics, a "shifting" employer rationale and a lack of due deliberation in hiring and that sex was a substantial factor in the hiring decision. The commission awarded Kanvick $13,362.14 (plus interest).

There were several other commission decisions which disposed of contested cases on other procedural grounds (primarily the failure of charging parties to adequately prosecute their cases and the agreed settlement of parties).

C. CASELOAD STATISTICS

In FY88, 294 new cases were filed with the Commission. The majority of the cases alleged employment discrimination. A summary of the case filings by area and basis of discrimination and type of respondent follows:

AREA

246	Employment
4	Training/Education
22	Housing
3	Public Accommodations
11	Government Services
4	Insurance
3	Coercion
1	Declaratory Rulings

BASIS *

4	Religion - Catholic
4	Religion - Other
148	Sex - Female
30	Sex - Male
5	National Origin - Hispanic
2	National Origin - Mexican
2	National Origin - Other
59	Age
40	Handicap
44	Retaliation
2	Race - Asian/Pacific Islander
7	Race - Black
29	Race - American Indian
3	Race - Other
10	Race - White
39	Marital Status
8	Political Belief

* Total equals more than 294 because some complaints allege more than one basis.

TYPE OF RESPONDENT

174	Private Employers
49	State & Local Government
16	Public College/University
24	School Districts
1	Unions
18	Private Landlords
3	Housing Authorities
7	Insurance Companies
2	Other

The Commission closed 283 cases during the fiscal year and had 275 cases open at the end of the year. The following chart summarizes the closures by type:

9	Withdrawal with benefits
51	Predetermination settlements
126	No cause findings
19	Conciliations
20	Conciliation failure-right to sue issued
5	Dismissed when complainant filed private lawsuit
17	Administrative closures
9	No jurisdiction
25	Withdrawal without benefits
2	Other

STATE OF MONTANA
Office of the Governor
EXECUTIVE ORDER NO. 24-81

Executive Order Directing the Department of Administration to Implement and Maintain an Equal Employment Opportunity Program in State Government

WHEREAS, equal opportunity in state government is a goal to which I am committed, and

WHEREAS, discriminating barriers to employment in state government must be eliminated, and

WHEREAS, an effective state equal employment opportunity program must be implemented and maintained.

NOW, WHEREOF, I, GEORGE TURMAN, by the authority vested in me as Governor of the State of Montana, pursuant to Article VI, Section 4, of the Constitution of the State of Montana and Sections 2-7-103, 2-15-103, and 2-15-201, Montana Codes Annotated, do hereby order the Department of Administration as follows:

1. Implement and maintain an Equal Employment Opportunity Program for all state government employees. Specifically the Department shall provide such regulations, standards, and other guidelines as may be necessary to implement and maintain an effective equal employment opportunity program throughout state government. The program objectives shall be to eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training.
2. Monitor the Equal Employment Opportunity Program and submit a status report to me within 90 days of the end of each year.

This order is effective immediately.

GIVEN under my hand and the GREAT SEAL of the State of Montana this 13TH day of October in the year of our Lord One Thousand Nine Hundred Eight-One.

George Turman

GEORGE TURMAN, Acting Governor

ATTEST:

Jim Waltermire

JIM WALTERMIRE, Secretary of State

APPENDIX B

DESCRIPTION OF EEO-4 CATEGORIES

A. Officials and Administrators: Occupations in which employees set broad policies, exercise overall responsibility for execution of these policies, or direct individual departments or special phases of the agency's operations, or provide specialized consultation on a regional, district or area basis. Includes: department heads, bureau chiefs, division chiefs, directors, deputy directors, controllers, examiners, wardens, superintendents, sheriffs, police and fire chiefs and inspectors and kindred workers.

B. Professionals: Occupations which require specialized and theoretical knowledge which is usually acquired through college training or through work experience and other training which provides comparable knowledge. Includes: Personnel and labor relations workers, social workers, doctors, psychologists, registered nurses, economists, dieticians, lawyers, system analysts, accountants, engineers, employment and vocational rehabilitation counselors, teachers or instructors, police and fire captains and lieutenants and kindred workers.

C. Technicians: Occupations which require a combination of basic scientific or technical knowledge and manual skill which can be obtained through specialized post-secondary school education or through equivalent on-the-job training. Includes: computer programmers and operators, drafters, surveyors, licensed practical nurses, photographers, radio operators, technical illustrators, highway technicians, technicians (medical, dental, electronic, physical sciences), assessors, inspectors, police and fire sergeants and kindred workers.

D. Protective Service Workers: Occupations in which workers are entrusted with public safety, security and protection from destructive forces. Includes: police patrol officers, firefighters, guards, deputy sheriffs, bailiffs, correctional officers, detectives, marshals, harbor patrol officers and kindred workers.

E. Paraprofessionals: Occupations in which workers perform some of the duties of a professional or technician in a supportive role, which usually require less formal training and/or experience normally required for professional or technical status. Such positions may fall with an identified pattern of staff development and promotion under a "New Careers" concept. Includes: library assistants, research assistants, medical aids, child support workers, policy auxiliary, welfare service aids, recreation assistants, homemakers aides, home health aides, and kindred workers.

F. Office and Clerical: Occupations in which workers are responsible for internal and external communication, recording and retrieval of data and/or information and other paperwork required in an office. Includes: bookkeepers, messengers, office machine operators, clerk-typists, stenographers, court transcribers, hearing reporters, statistical clerks, dispatchers, license distribution, payroll clerks and kindred workers.

G. Skilled Craft Workers: Occupations in which workers perform jobs which require special manual skill and a thorough and comprehensive knowledge of the processes involved in the work which is acquired through on-the-job training and experience or through apprenticeship or other formal training programs. Includes: mechanics and repairers, electricians, heavy equipment operators, stationary engineers, skilled machining occupations, carpenters, compositors and typesetters and kindred workers.

H. Service-Maintenance: Occupations in which workers perform duties which result in or contribute to the comfort, convenience, hygiene or safety of the general public or which contribute to the upkeep and care of buildings, facilities or grounds of public property. Workers in this group may operate machinery. Includes: chauffeurs, laundry and dry cleaning operatives, truck drivers, bus drivers, garage laborers, custodial employees, gardeners and groundkeepers, refuse collectors, construction laborers.

STATE OF MONTANA

PAYROLL PERSONNEL POSITION CONTROL

EEO INPUT AND EMERGENCY INFORMATION FORM

FOR DATA PROCESSING USE ONLY

E E O INFORMATION (This part is required)

This information should be completed by the employee, subject to verification by the EEO Officer. The information is confidential and used only for statistical summary to evaluate fair employment practices.

Agency Name | **Agency Number**

Employee Name Last | First | Middle | **Soc.Security Number**

Home Phone Number	Date of Birth	Sex	EEO Race/Ethnicity Codes
502 ( ) — area	MM DD YY	M F	W White ☐ I American Indian or Alaskan Native ☐ S Hispanic ☐ A Asian or Pacific Islander ☐ B Black ☐

502 Are you a disabled person?	yes	no	Are you a veteran?	yes	no

Veteran and Disabled Veteran Status Codes

If you answered "yes" to the veteran question, check ONE box that best describes your veteran status.

1. Disabled Veteran

502
- M ☐ Disabled Vietnam Veteran (served between 8•5•64 – 5•7•75)
- N ☐ Disabled Veteran of Other Campaign or War
- O ☐ Other Disabled Veteran

2. Veteran — Not Disabled
- P ☐ Vietnam Veteran (served between 8•5•64 – 5•7•75)
- Q ☐ Veteran of Other Campaign or War
- R ☐ Other Veteran

EEO Officer or Designee Signature (verification)

EMERGENCY INFORMATION

530 Your Office Phone No. —	*Please indicate the person to be contacted in the event you are involved in an emergency and unable to contact the person yourself.*

503 Emergency Notification (NAME)	Relationship to Employee
	1 ☐ Spouse 2 ☐ Child 3 ☐ Parent 4 ☐ Other Family 5 ☐ Other

503 Emergency Contact Phone ( ) — area	504 Address	City	State	Zip

504 **Comments** (Use a maximum of 30 letters and spaces to indicate special considerations for contacting the emergency notification person.) For example: " M-Th. F & after 5 at home phone"

Employee Signature	***Date***

Please see instructions on back.

Dear State Employee,

Executive Order 24-81 of the State of Montana directs the Department of Administration to "Implement and maintain an Equal Employment Opportunity Program for all state government employees . . . to eliminate discrimination in personnel salaries and procedures, job structuring and classification, hiring, firing, promoting and training." Accurate EEO data on state employees is essential in carrying out the objectives of this Order.

Using the EEO Input and Emergency Information Form we seek to obtain reliable, accurate EEO data on state employees. The EEO information is confidential and will be used only for statistical summaries to evaluate fair employment practices. The definitions listed below are included to aid you in completing the form. Talk with your agency EEO Officer or call the EEO Section, State Personnel Division (444-3871) if you have questions about the form.

The Emergency Information section of the form is optional but should be completed if you wish to have someone contacted in the case of an emergency. Any questions concerning the Emergency Information may be directed to your supervisor.

Please complete the form and return it to your supervisor within two days. Thank you for your cooperation in completing the form.

Sincerely,

Ellen Feaver

Ellen Feaver
Director
Department of Administration

American Indian/Alaskan Native - A person having origins in any of the original people of North America, who maintains cultural identification through tribal affiliation or community recognition.

Asian/Pacific Islander - A person having origins in any of the original people of the far East, Southeast Asia, the Indian subcontinent, or the Pacific Islands. This area includes, for example, China, India, Japan, Korea, the Philippines and Samoa.

Black - A person having origins in one of the black racial groups of Africa.

Hispanic - A person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race.

Disabled Person - A person having a physical or mental impairment which substantially limits a major life activity (such as walking, caring for oneself, seeing, hearing, speaking, learning or breathing); or has a record of such impairment; or is regarded as having such an impairment.

EXPLANATION OF TABLES ON NEW HIRES, PROMOTIONS, AND TERMINATIONS FOR WOMEN

(Tables on following pages)

Permanent Employees

Statistics on these tables are for employees categorized as "permanent." Consequently, employment statistics on these tables may differ significantly from other statistical reports for the same time period which include employees not categorized as "permanent" such as those categorized as "temporary."

While employment practices affecting other than permanent employees are monitored through statistical reports for discriminatory effects, statistics on other than permanent employees have been excluded here since they are not as valid in assessing the executive branch's performance in the hiring, termination, and promotion of women.

Agency New Hires

This heading includes every hire of a permanent employee new to a particular agency. The "new hire" may have been an employee of another state agency. Consequently, statistics here should not be interpreted as "new to the executive branch."

Promotion

This heading includes any increase in grade or EEO-4 Category level of an employee without a change in the state agency they are employed with.

Category Promotions Only

This heading counts all employees who have changed EEO-4 Categories in receiving a promotion. An example would be an employee promoted from a position in Category B, Professionals, to a position in Category A, Administrators & Officials. Most promotions under this heading would also be "grade promotions" but it is possible that an employee could change from one Category to another without a change in grade.

Grade Promotions Only

This heading counts employees receiving a promotion in grade without a change in EEO Category. The heading "All Promotions" is the best indicator of all employees receiving grade promotions during the time period indicated.

All Agency Terminations

This heading counts all employees who have left a state agency's employment. Data here would include employees who accepted jobs with other state agencies.

Left State Government

This heading counts all state employees who terminated employment with an executive branch agency and did not accept employment with another executive branch state agency.

APPENDIX D

TABLE 1

NEW HIRES AND PROMOTIONS FOR WOMEN
EXECUTIVE BRANCH/PERMANENT EMPLOYEES ONLY

July 1, 1987 through June 30, 1988

	Montana		State	Agency New Hires			All Promotions			Category Promotions Only (to new Category)			Grade Promotion Only (within Category)		
EEO Category	Labor Force % Women	Women No.	Work Force % Women	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %
Administrators	30.6	142	20.6	22	6	27.3	78	26	33.3	52	21	40.4	26	5	19.2
Professionals	49.1	1,200	40.7	373	176	47.2	317	163	51.4	116	58	50.0	201	105	52.2
Technicians	49.3	994	54.4	142	72	50.7	269	142	52.8	123	95	77.2	146	47	32.2
Protect. Serv.	11.3	59	9.6	94	15	16.0	38	5	13.2	4	1	25.0	34	4	11.8
Para Prof.	*	474	63.7	71	49	69.0	180	102	56.7	43	30	69.8	137	72	52.6
Clerical	81.8	1,255	90.1	301	266	88.4	115	102	88.7	15	12	80.0	100	90	90.0
Skilled Craft	5.2	30	4.2	40	1	2.5	66	2	3.0	10	1	10.0	56	1	1.8
Serv./ Maint.	*	170	38.2	40	16	40.0	56	31	55.4	9	3	33.3	47	28	59.6
TOTAL	42.6%	4,324	46.1	1,083	601	55.5	1,119	573	51.2	372	221	59.4	747	352	47.1

* Montana labor force figures for the Para-Professional and Service/Maintenance EEO4 categories are not available separately. They are combined and the availability figure is 34.6% for women.

APPENDIX D

TABLE 2

NEW HIRES AND TERMINATIONS FOR WOMEN
EXECUTIVE BRANCH/PERMANENT EMPLOYEES ONLY

July 1, 1987, through June 30, 1988

	Montana	State		Agency New Hires			All Agency Terminations			Left State Government		
EEO Category	Labor Force % Women	Women No.	Work Force % Women	Total No.	Women No.	Women %	Total No.	Women No.	Women %	Total No.	Women No.	Women %
Administrators	30.6	142	20.6	22	6	27.3	43	10	23.3	38	10	26.3
Professionals	49.1	1,200	40.7	373	176	47.2	353	151	42.8	297	131	44.1
Technicians	49.3	994	54.4	142	72	50.7	211	122	57.8	188	109	58.0
Protect. Serv.	11.3	59	9.6	94	15	16.0	80	12	15.0	71	11	15.5
Para Prof.	*	474	63.7	71	49	69.0	120	74	61.7	105	65	61.9
Clerical	81.8	1,255	90.1	301	266	88.4	220	197	89.6	159	141	88.7
Skilled Craft	5.2	30	4.2	40	1	2.5	65	4	6.2	55	3	5.5
Serv./Maint.	*	170	38.2	40	16	40.0	60	28	46.7	58	27	46.6
TOTAL	42.6	9,377	46.1	1,083	601	55.5	1,152	598	51.9	971	497	51.2

* Montana laborforce figures for the Para-Professional and Service/Maintenance EEO4 categories are not available separately. They are combined and the availability figure is 34.6% for women.

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